

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SCHLOSS GOEHRDE GMBH,
WOLFES & VON ETZDORF
ASSECURANZBUREAU,
And Subrogated Cargo Insurers

Plaintiffs,

04 CIV. 5596 (DLC)
ECF CASE

-against-

SEAFRIGO USA, INC.;
MEDITERRANEAN SHIPPING CO. S.A.
MEDITERRANEAN SHIPPING CO.
(USA) INC., *in personam*;
M/V "MSC RAFAELA", her engines, tackle,
boilers, etc., *in rem*.

COMPLAINT

Defendants.

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Plaintiffs, through their undersigned attorney, allege as follows for their complaint against defendants upon information and belief:

FIRST CAUSE OF ACTION

1. This action involves admiralty and maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, including claims arising under federal law. The Court also has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as well as pendent, ancillary and supplemental jurisdiction as to certain aspects of the claim. Plaintiffs seek recovery for cargo loss and damage caused by defendants' breaches of contract and torts.

2. Plaintiffs SCHLOSS GOEHRDE GMBH and WOLFES & VON ETZDORF ASSECURANZBUREAU are corporations or other business entities organized under the laws of, and with their principal places of business in, the Federal

Republic of Germany. Schloss Goehrde was at all material times the consignee, purchaser, and owner of the cargo in suit and the holder of the subject bills of lading and brings this action on its own behalf and for and on behalf of the subrogated cargo insurer AXA Versicherung AG, who paid the insurance claim arising from the loss and damage to the subject cargo through Wolfes & Von Etzdorf.

3. Defendants MEDITERRANEAN SHIPPING COMPANY S.A., MEDITERRANEAN SHIPPING COMPANY (USA) INC., and SEAFRIGO USA, INC. are believed to be corporations organized under the laws of a foreign sovereign or one of the fifty states, and were at all material times engaged in the business of common carriers of cargo by water for hire. This Court has personal jurisdiction over said defendants based on their business activities and contacts in and with the State of New York and/or based on their contacts and business activities with the United States as a whole pursuant to Rule 4(k) (2) of the Federal Rule of Civil Procedure. In addition the respective bills of lading issued by or on behalf of defendants provide for jurisdiction in the United States District Court for the Southern District of New York.

4. The M/V "MSC RAFAELA" was at all material times engaged in the common carriage of cargo by water for hire, including shipments to and from the United States, and was during the voyage in suit owned, operated, chartered and/or managed by the MSC Defendants. Said vessel is now or reportedly will be within the jurisdiction of this Honorable Court during the pendency of this action.

5. This action involves damage and loss to a shipment of 1080 cartons of frozen meat moving or intended to move in container TRLU 1923334 from Devine, Texas, to Hamburg, Germany, by way of Houston aboard the M/V "MSC RAFAELA",

V. 166R, as described more fully in Seafrigo USA, Inc. bill of lading 400517 dated on or about November 3, 2003, and Mediterranean Shipping Co. S.A. bill of lading MSCUHS230301 dated on or about November 4, 2003, and others. (Booking No.: HOU057488)

6. The aforementioned cargo was delivered in good order and condition to the aforesaid defendants at the place of receipt and to the vessel at the port of loading on or about November 4, 2003. Defendants failed to deliver the cargo to the agreed destination in the same good order and condition. Instead, at the time of delivery the cargo was in damaged and depreciated condition and was otherwise unfit for intended usage.

7. The said loss and damage was caused by the unseaworthiness of the carrying vessel and container and by defendants' deviations from, and fundamental breaches of, the contracts of carriage and/or bailment, and their reckless failure to properly load, stow, carry, refrigerate, discharge and care for the cargo during the subject voyage.

8. As a result of the aforesaid, defendants, as common carriers, warehousemen and/or bailees, are liable to plaintiffs for the resulting damages in the amount of Seventy Four Thousand Six Hundred Twenty and 94/100s EUROS (EUR 74,620.94) which converts to Ninety Two Thousand Eight Hundred Fifty Eight and 76/100s United States Dollars (\$92,858.76) at present exchange rates, no part which has been paid although duly demanded.

9. Plaintiffs sue herein on their own behalf and as agents and trustees for and on behalf of anyone else who may now have or hereafter acquire and interest in this action.

SECOND CAUSE OF ACTION

10. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 9 of this Complaint.

11. The damage to the cargo in suit was caused in whole or in part by defendants' failure to provide contracted-for specialized accessorial services, including temperature-controlled care during all periods of custody and carriage.

12. As a result of the aforesaid, defendants are jointly and severally liable to plaintiffs for the damages claimed in Paragraph 8.

WHEREFORE, plaintiffs demand judgment against defendants MEDITERRANEAN SHIPPING COMPANY S.A., MEDITERRANEAN SHIPPING COMPANY (USA) INC., and SEAFRIGO USA, INC., jointly and severally, in the amount of Seventy Four Thousand Six Hundred Twenty and 94/100s EUROS (EUR 74,620.94) plus prejudgment interest at the rate of 9% per annum together with the costs of this action and pray that this Honorable Court issue its process against the aforesaid vessel in rem. Plaintiffs also request such other and further relief as warranted by justice.

Dated: New York, New York
July 16, 2004

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